

LAW 122: Business Law

TRAIN TO LEARN EFFECTIVELY: TIP SHEETS

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INTRODUCTION TO TORTS

Overview

- A **tort** is a civil (private) wrong that causes a person to suffer a loss or harm.
- It is distinct from a criminal wrong because a criminal wrong is public.
- It is imposed by law and is designed to return the victim to the position they were at before the tort occurred.

Types of Torts

- There are three types of torts: **Intentional Tort, Negligence, and Strict Liability.**
 1. An **intentional tort** is an action intentionally undertaken by a person causing injury or damage to another.
 2. The tort of **negligence** is a careless act causing injury, loss, or damage to another; where the intent of the **tortfeasor** (i.e., the one who commits the tort) is not relevant.
 - o There are three types of negligence torts: **Duty of Care, Breached Reasonable Standard of Care, and Caused Unreasonable Injury, Damage, or Loss.**
 3. A **strict liability tort** occurs when the tortfeasor is responsible for an especially dangerous activity that causes harm.

Vicarious Liability

- The notion of **vicarious liability** is when one is legally liable for the actions of another.
- It is based on common law and statute.
- **Example:** An employer may be liable for the actions of its/their employees.
- There are social policy reasons for vicarious liability:
 1. **Deterrence** → Incentives employers to take care of people they employ;
 2. **Compensation** → Expands the range of those liable to compensate the victim;
 3. **Fairness** → Serves a broader community purpose to hold those responsible, even if partially, liable.
- The legal test for employer liability is: Was the employee's tortious act committed in the course of employment.
 - o An employer is not vicariously liable if there is no employer-employee relationship (e.g., independent contractor) or if the tortious act was committed outside the employment relationship.

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Remedies for Torts

- The main remedy for a tortious act is **compensatory damages**: intended to place the injured party in the position it was in before the act was committed and compensate for any loss incurred as a result of the tort.
- In this way, compensatory damages are **backward looking**.
- There are other important components of tort remedies, such as:
 1. **Remoteness** → A tortfeasor will not be liable for a loss suffered by an injured party that is too “remote,” and only applies to negligence.
 2. **Mitigation** → An injured party cannot claim any loss that results from its failure to take reasonable steps to minimize the consequences of the tortfeasor’s act.
 3. **Punitive Damages** → They do not compensate for the loss that occurred, but act to punish the tortfeasor for conduct that is “harsh, vindictive, reprehensible, and malicious.”
 4. **Nominal Damages** → They act as a symbolic recognition that a tort has been committed, although there is no meaningful loss or damage to the victim.
 5. **Injunction** → This is a court-order for the tortfeasor to refrain from doing something (e.g., refrain from making excessive noise past a reasonable time).

Alternative Tort Compensation

- **Alternative Compensation** consists of legally sanctioned schemes for compensation for injured persons.
 - **Example:** Workers Compensation is an employer-funded insurance program for workers who experience work-related injury in return for which workers forego their right to take legal action against the employer.
 - **Example:** No-Fault Insurance covers car accidents and compensates losses through a party’s own insurance policy (i.e., In Ontario, it prevents a person from suing in tort unless the damages are especially serious).